



## **NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION – NCPR #02-005**

RE SOMERSWORTH, CUMBERLAND FARMS #2820, EXISTING UNDERGROUND  
STORAGE TANK FACILITY (UST #0111500) (DES #199610004)

Dear Mr. Longton

The New Hampshire Department of Environmental Services (“DES”) is hereby notifying you that the above-referenced facility, located at 258 High Street, Somersworth, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. **Failure to achieve compliance with the following deficiency within 90 days from the date of this Notice of Non-Compliance and Permit Revocation (“Notice”) will result in revocation of your Permit-to-Operate on January 22, 2003. This letter contains important compliance and procedural information. Please read it carefully.**

### Env-Wm 1401.31 Operation of Leak Monitoring Equipment

Env-Wm 1401.31(a) requires leak monitoring equipment and devices to be maintained in good working order at all times to continuously perform their original design function and be tested annually for proper operation in accordance with the manufacturer’s requirements. The leak monitor was not in continuous operation at the time of inspection. The red alarm light that is activated when liquid is detected must be repaired. Provide documentation that the leak monitor has been repaired to DES within 30 days of the date of the repair.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for cost associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund (“the Fund”). Under New Hampshire Code of Administrative Rules Chapter Odb 100-400, Rules for Reimbursement from the Oil Discharge and Disposal Cleanup Fund, Subpart Odb 401.01(b), no reimbursement shall be made from the Fund for any facility at which compliance with part Env-Wm 1401, once achieved, is not maintained. Compliance has not been maintained at your facility. Consequently, the Fund is not available to you as a financial responsibility mechanism. Absent an alternative mechanism, such as private insurance, you are not in compliance with Env-Wm 1401.10(a). You must provide DES with evidence of financial responsibility in the amount of \$1,000,000 within ninety (90) days from the date of this letter. At such time as the deficiencies listed in this Notice have been resolved, and your facility is deemed in compliance with Env-Wm 1401 by DES, you may petition the Oil Fund Disbursement Board for reinstatement to the Fund. If reinstated, you may use the Fund as your financial assurance mechanism.

In accordance with Env-Wm 1401.07(a), no person shall operate an underground storage facility without a permit issued by DES. Within 30 days from the date of permit revocation the

October 23, 2002

Page 2 of 3

facility shall be closed in accordance with either Env-Wm 1401.17 for temporary closure, or Env Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0111500) shall be revoked effective **January 22, 2003**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, you may contact undersigned, at the Waste Management Division at (603) 271-1165.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lynn A. Woodard", is written over a large, bold, black "COPY" stamp.

Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7099 3400 0018 1299 0893

cc: George Dana Bisbee, Acting Commissioner

Mark Harbaugh, DES Legal Unit

Fred McGarry, P.E., Chief Engineer. WMD

George Lombardo, P.E., WMD

Somersworth Health Officer